defendant to comment unfavorably upon a plaintiff's failure to call his doctor as his own witness,[8] though others say that such a practice is virtually a denial of the privilege.[9] If a plaintiff calls one doctor to the stand, is this a waiver of the privilege as to others? It ought to be, if their testimony is relevant, but the rule seems to be that all the attending physicians who treated the same ailment or injury may testify, if one of them is called by the plaintiff,[10] but that there is no waiver of the testimony of those who treated the plaintiff for other injuries or illnesses, even though their testimony be highly relevant.[11]

Such divergence as is indicated in these rules seems "a burlesque upon logic and justice", to quote Professor Wigmore. When a plaintiff voluntarily discloses his injuries by bringing a suit in which they are the issue, why should the law regard them as still a secret? The decision in Moreno v. New Guadalupe Mining Company goes as far as any decision in the country in applying reason and common sense to this highly artificial subject.

The whole privilege has been greatly weakened by the Moreno decision and by the new statute,[12] and rightly so, it would seem. However, the exceptions do not yet include insurance and testamentary cases. Neither the personal representative nor the heir can waive the privilege. A doctor's testimony might defeat a recovery on an insurance policy, or break a will, but, on the other hand, it might establish either. The rule would work both ways. Future legislatures may continue to graft exceptions upon an indefensible rule. A more sensible course would be the abolition of the rule altogether.

E. B. P.

INJUNCTION: INTERFERENCE WITH EMPLOYMENT.—Members of a labor union may be enjoined from persuading employees to agree to join the organization when non-membership in a union is one of the conditions of the continuation of the present employment and the object of the union men is to induce the employees to strike in order to compel the employer to recognize the union. This was decided by a majortity of the United States Supreme Court in the case of *Hitchman Coal & Coke Company v. Mitchell.*[1]

669, 59 L. Ed. 415, 35 Sup. Ct. Rep. 210. In this case a statute declared the rule which the preceding cases reached on common law principles.

[8] City of Warsaw v. Fisher, supra, n. 4; Bullard v. Boston Ry. (1886), 64 N. H. 27, 5 Atl. 838 .

[9] Evans v. Town of Trenton (1892), 112 Mo. 390, 20 S. W. 614; McConnell v. City of Osage, supra, n. 7.

[10] Morris v. N. Y. Ry. (1895), 148 N. Y. 88, 42 N. E. 410; Smart v. Kansas City Ry., supra, n. 4.

[11] Hope v. Ry. Co. (1886), 40 Hun. 438, affirmed in 110 N. Y. 643, 17 N. E. 873; Metropolitan St. Ry. v. Jacobi (1901), 112 Fed. 924.

[12] Supra, n. 1.

[1] (Jan. 1, 1918), U. S. Adv. Ops. 96.

Plaintiff made the stipulation that employees were to leave its employment as soon as they joined the union. The workmen were induced by defendants to agree to join but continued at work, intending to leave when they actually became members of the union. The majority of the court considers that, from the viewpoint of equity, defendants induced a breach of contract on the part of the employees by procuring them to agree to join the union while remaining at work for plaintiff, because, from the time of their agreement to join, their position was in effect that of union members. The minority[2] holds that the contract did not require employees to cease work until they actually joined the union. Both majority and minority agree that, although persuasion itself is lawful, since defendants' acts were calculated to injure plaintiff, they should be enjoined if there was not a justifiable cause or excuse, and that it was immaterial that the employment was "at will" and terminable by either party at any time.[3] The majority holds that the object of unionizing the mine by inducing employees to join the union and strike was not a justification, for the right of workmen to organize and enlarge membership "must always be exercised with reasonable regard for the conflicting rights of others"; the minority contends that the purpose of defendants of strengthening the position of the workmen by such unionization deprived the plaintiff of any right to relief. The right to run an open shop is not involved in this case; plaintiff refused to employ any union men and the union was not attempting to secure the employment of its members together with the non-union men but insisted on a closed union shop.

By this decision it is determined that the relations between employer and employees in a non-union shop cannot be disturbed by union men against the will of the employer in order to secure a closed union shop. When an employer has secured an agreement satisfactory to his employees and advantageous to his business, to allow third persons to interfere even by persuasion intending, by causing dissatisfaction in the particular case, to improve the general working conditions, is to hold the right of persons to organize for the betterment of their conditions superior to the right of an employer to enjoy the benefits resulting from a contract entered into freely and satisfactory to both sides. The acts enjoined consisted of persuading individual employees to agree to join the union with the intent of declaring a strike as soon as sufficient men were obtained by the union. It is debatable whether the majority would have been willing to hold defendants' acts unlawful if the union men had succeeded in procuring the

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[2] Mr. Justice Brandeis, Mr. Justice Holmes and Mr. Justice Clarke concurring in the dissent.

[3] Truax v. Raich (1915), 239 U. S. 33, 60 L. Ed. 131, 36 Sup. Ct. Rep. 7, L. R. A. 1916 D 545, Ann. Cas. 1917 B 283.

employees to join by calling a single general meeting at which the benefits of union membership were presented. Taking into consideration that there was no contract not to join the union, would persuasion in this form have been an interference with plaintiff's rights for which the law would have afforded a remedy?

The decision is limited to the case of third persons interfering between an employer maintaining a non-union shop and his employees and does not go to the extent of those cases which prohibit the use of persuasion by striking employees.[4] It has been maintained that there is a distinction between persuasion to secure persons to leave their employment when used by employees in aid of their admitted right of striking to better their own conditions and when exercised by members of a union merely to secure recognition of the union[5] when conditions are satisfactory to the employees.

E. M. C.

SOCIETIES: RIGHTS OF EXPELLED MEMBERS.—In *Supreme Lodge of Moose v. Los Angeles Lodge*[1] the plaintiff failed in an action to replevy property held by the local lodge. It was claimed that under the charter and by-laws the property was forfeited by reason of the revocation of the charter of the defendant. The court decided that the order of revocation was ineffective since not made according to the procedure prescribed by the rules, and in addition remarked that a rule providing for expulsion of a member or of a local lodge without a hearing would be ineffective as contrary to natural justice. The case is interesting as suggesting the question, first, of the right of an aggrieved member of a mutual benefit organization to seek legal aid; second, of the conclusiveness of a decree of the tribunal of the lodge.

A by-law to the effect that remedies within the society must be exhausted before resort to the courts, will be upheld where such remedies are reasonable, and where the society has not by its own act defeated such resort, though it seems that a by-law applicable to members will not bind beneficiaries of benefits.[2]

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[4] George Jonas Glass Company v. Glass Bottle Blowers' Assoc. (1908), 77 N. J. Eq. 219, 79 Atl. 262, 41 L. R. A. (N. S.) 445 and note.

[5] Tunstall v. Stearns Coal Company (1911), 192 Fed. 808, 41 L. R. A. (N. S.) 453 and note; Everett Waddey Company v. Richmond Typographical Union (1906), 105 Va. 188, 53 S. E. 273, 5 L. R. A. (N. S.) 792, 8 Ann. Cas. 798.

[1] (Dec. 31, 1917), 55 Cal. Dec. 81.

[2] Berlin v. Eureka Lodge (1901), 132 Cal. 29, 64 Pac. 254 (Provision upheld); Markham v. Supreme Court (1907), 78 Nebr. 295, 110 N. W. 638 (Provision unreasonable). Compare Bukofzer v. Grand Lodge (1893), 139 N. Y. 612, 35 N. E. 204; Correia v. Supreme Lodge (1914), 218 Mass. 305, 105 N. E. 977; Knights v. Mayfield (Tex. Cv. A., 1912), 147 S. W. 675 (Resort defeated by society); Kumle v. Grand Lodge (1895), 110 Cal. 204, 42 Pac. 634 (Provision not applicable to beneficiary). For fuller reference to cases in other states see 52 L. R. A. (N. S.) 806, note.